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 Sun Earth Solar Power Co., Ltd.  
 and NB Solar USA Inc.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

SunEarth, Inc. and  
 The Solaray Corporation,  
 Plaintiffs,

v.

Sun Earth Solar Power Co., Ltd.,  
 and NB Solar USA Inc.,  
 Defendants.

No. 4:11-CV-04991-CW (JCS)

RESPONSE OF DEFENDANTS TO RULE 59 MOTION

Plaintiffs apparently believe Local Rule 7-9 governs a motion asking this Court to reconsider its August 22, 2017 Order (Dkt. 239). They thus filed a Motion “for Leave to File” a Rule 59 motion (Dkt. 240) on August 23, 2017, citing L.R. 7-9. Section (d) of that rule provides no response need be filed, unless otherwise ordered by the Court.

The Court would know, however, that Local Rule 7-9 applies only to interlocutory orders, and the August 22 Order is not interlocutory. Nothing in rule 59 itself would appear to bar Plaintiffs’ filing a motion under that rule. Thus, to bring this drawn-out action to a close without further procedural haggling, Defendants ask the Court to treat Plaintiffs’ motion as itself a rule 59 motion, and then to deny it.

The ample reasons for denying the motion are contained in the August 22 Order itself. There has been no intervening change in controlling law since August 22, nor do Plaintiffs identify any newly discovered evidence. Nor was there legal error in the

1 August 22 Order. In their Motion, Plaintiffs simply rehash previously considered and  
 2 rejected arguments. Under rule 59, reconsideration of a judgment is an extraordinary  
 3 remedy used only sparingly, and a remedy exceedingly difficult for a moving party to  
 4 obtain.

5 In their motion, Plaintiffs cite cases in which the appellate court “reversed” a  
 6 costs award when it remanded the case to the District Court for further proceedings.  
 7 What Plaintiffs overlook is the District Court, in those cases, was free to re-award those  
 8 costs if the final result, at the conclusion of the case, after remand, remained the same.  
 9 That is precisely what happened here, as this Court’s August 22 order made clear.

10 This Court should treat Plaintiffs’ motion as itself a rule 59 motion, and then  
 11 deny it.

12  
 13  
 14 Date: September 5, 2017

Respectfully submitted,

15 /s/ James J. Foster

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